

**CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT**

By and Between

CITY OF EDINBURG, TEXAS

and

COUNTY OF HIDALGO, TEXAS

Effective as of October 17, 2017

STATE OF TEXAS § CHAPTER 380 AGREEMENT BETWEEN
COUNTY OF HIDALGO § THE CITY OF EDINBURG AND
CITY OF EDINBURG § THE COUNTY OF HIDALGO, TEXAS

This **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (the "**Agreement**") is made as of the 17th day of October, 2017, by and between the **CITY OF EDINBURG**, Texas (the "**City**"), a Texas home rule municipality, and the **COUNTY OF HIDALGO**, Texas (the "**County**").

RECITALS

WHEREAS, the growth of the County, including the City, has caused the County to outgrow the existing County courthouse, resulting in the need for a new courthouse (the "**Courthouse**") to accommodate the existing County Courts and allow for future growth; and

WHEREAS, the County and the City have each determined that in addition to serving the judicial needs of the County, a new Courthouse in downtown Edinburg is expected to revitalize the area and spur economic development in the community; and

WHEREAS, on December 12, 2016, at a joint meeting of the City Council of the City (the "**City Council**") and the Commissioners Court of the County, in order to support their mutual interests in building a new Courthouse in downtown Edinburg (the "**Courthouse Project**"), each approved that certain Memorandum of Understanding regarding the development of and funding for a new Hidalgo County Courthouse to be located in Edinburg, Texas (the "**MOU**"); and

WHEREAS, the MOU contemplates the parties entering into one or more additional agreements, including a chapter 380 agreement, in order to implement the purposes of the MOU; and

WHEREAS, the City and the County have now determined that entering into this Agreement is appropriate in order to move forward with the Courthouse Project and the related economic development; and

WHEREAS, the City seeks to provide economic incentives for the County to construct the Courthouse within the City of Edinburg boundaries; and

WHEREAS, on February 20, 2007 the City Council approved Resolution No. 1876 establishing the Economic Development Programs pursuant to Chapter 380 of the Texas Local Government Code and Article III, Section 52-a of the Texas Constitution to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Edinburg; and

WHEREAS, Article III, Section 52-a of the Texas Constitution provides, in part that "*[a] program created or a loan or grant made as provided by this section that is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the political subdivision does not constitute or create a debt for the purpose of any provision of this constitution*"; and

WHEREAS, the grants to be made by the City to the County in accordance with this Agreement are not secured by a pledge of ad valorem taxes and are not financed by the issuance of any bonds or other obligations payable from ad valorem taxes; accordingly, the City's commitment to provide the grants to the County pursuant to this Agreement will not create a debt of the City for the purpose of any provision in the Texas Constitution; and

WHEREAS, County's construction and maintenance of the Courthouse in downtown Edinburg would constitute significant investment by the County in the City of Edinburg and would also provide significant direct and indirect employment opportunities for residents of the City of Edinburg, Texas; and

WHEREAS, County currently estimates the construction and the completion of the Courthouse Project will cost approximately One Hundred Fifty Million Dollars (\$150,000,000.00); and

WHEREAS, the City has determined that a grant of funds to the County will serve the public purpose of promoting local economic development and stimulate business and commercial activity within the City of Edinburg; and

WHEREAS, the City recognizes the positive economic impact that the Courthouse Project will bring to the City through the development and diversification of the economy, elimination of unemployment and underemployment through the creation of new jobs, the attraction of new businesses, the retention of existing businesses and jobs, and the retention and growth of the ad valorem and personal property tax revenues and sales tax revenues generated by economic growth around the Courthouse; and

WHEREAS, as originally contemplated in the MOU, the City agreed to contribute economic incentives to the County in an amount equal to the lesser of twenty percent (20%) of the project cost or Thirty Million Dollars (\$30,000,000) in order to support the success of the Courthouse Project; and

WHEREAS, the City hereby finds that the Courthouse Project and this Agreement clearly promote economic development in the City of Edinburg and, as such, meets the requisites under Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code, and further is in the best interests of the City and the County; and

WHEREAS, the City and the County desire to set forth in this Agreement the terms and conditions of the payment to the County of economic development funds.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and agreements set forth in this Agreement, the City and the County have agreed and do hereby agree to the following:

SECTION I DEFINITIONS

A. As used in this Agreement, the following terms shall have the meanings set out below:

1. “**Agreement**” has the meaning given such term in the introductory paragraph above.
2. “**City**” has the meaning given such term in the introductory paragraph above.
3. “**City Contribution Commitment**” has the meaning given such term in Section IV.A below.
4. “**City Council**” has the meaning given such term in the recitals above.
5. “**County**” has the meaning given such term in the introductory paragraph above.
6. “**County Financing**” has the meaning given such term in Section IV. B below.
7. “**Courthouse**” has the meaning given such term in the recitals above.
8. “**Courthouse Project**” has the meaning given such term in the recitals above.
9. “**EEDC**” means the Edinburg Economic Development Corporation, a non-profit corporation created by the City and organized pursuant to Section 4A of the Development Corporation Act of 1979, - Article 5190.6, V.A.T.C.S – now codified, as it pertains to the EEDC, under Chapters 501 and 504, Texas Local Government Code.
10. “**MOU**” has the meaning given such term in the recitals above.

11. “**Off-Site Infrastructure**” has the meaning given such term in Section IV.G below.

12. “**Plan**” means the County’s plan for the implementation of the Courthouse Project, as the same is changed by the County from time to time.

13. “**TIRZ**” has the meaning given such term in Section IV. F below.

14. “**Total Project Cost**” includes, without limitation, the architectural, engineering, design, government approvals, geotechnical, lab testing, surveying, construction, construction/program management, FF&E, accounting and similar development costs to have the Courthouse designed, constructed and furnished, whether incurred prior to or after execution of this Agreement

B. Where the context or construction otherwise requires, all words applied in the plural shall be deemed to have been used in the singular and the masculine shall include the feminine and neuter.

SECTION II BACKGROUND

A. As set forth in the MOU, the existing County courthouse was originally constructed in 1954. It accommodated five courts that served a small rural community with a population of approximately 168,000, while, the County now has 24 courts and a population nearing 900,000. The increase in the number of courtrooms requires County and City leaders to address the need for a new Courthouse to accommodate the current County courts, while considering continuing growth and the changing landscape that has become known as downtown Edinburg. In addition to serving the judicial needs of the County, a new Courthouse in downtown Edinburg is expected to revitalize the area, compliment the growth of the University of Texas RGV, and spur economic development in the vibrant community.

B. The MOU was originally envisioned as a three party agreement among the County, the City and the EEDC. After approval of the MOU by the City and the County, the City informed the County that the EEDC had opted not to become a signatory to the MOU. The City and the County by execution of this Agreement, acknowledge that they are continuing the MOU without the EEDC, and that paragraph 5 of the MOU is deemed to have been deleted.

C. While not all of the parties had executed the MOU prior to execution of this Agreement, the MOU is deemed executed as of the date thereof.

D. The County currently expects that the Courthouse will:

- a. Be built on the existing courthouse square (100 N. Closner, Edinburg, Texas) in downtown Edinburg;

- b. Be under construction before the end of 2018 and be completed by 2024.
- c. Serve the existing courts in Hidalgo County, and allow for consideration for future courts (approximately 24-30 courtrooms in a 300,000 – 500,000 square foot, 6-7 floor building);
- d. Serve the County Clerk and District Clerk, as well as other offices deemed necessary to support court operations or otherwise deemed appropriate by the County;
- e. Improve safety and health conditions for all visitors, employees, and those who conduct business at the Courthouse;
- f. Accommodate parking for employees and others with business at the Courthouse;
- g. Increase opportunities for economic development, including retaining existing jobs (over 300 with the County, not including construction or other indirect benefits) and businesses in downtown Edinburg; and
- h. Benefit the citizens of the City and the County.

E. The current estimate of the Total Project Cost is One Hundred Fifty Million Dollars (U.S. \$150,000,000.00). The County currently anticipates obtaining County Financing for all or part of the Total Project Cost during 2018, with the first payment on such County Financing expected to be due in 2019.

SECTION III COUNTY IMPROVEMENTS

A. The County is committed to constructing and operating a new Courthouse, which the County agrees will be in the City. A description of the County's current Courthouse Plan is attached hereto as **Exhibit "A"**. The County agrees to update the City on material changes to the Plan, including the schedule and Total Project Cost.

B. The City may provide input to the County with respect to the County's ongoing planning, design, and site-work considerations for the Courthouse. If the County creates a committee for such planning design and site-work considerations for the Courthouse, the County agrees to allow the City to appoint one member of the committee

C. Notwithstanding anything to the contrary contained herein, the parties agree that (i) the Courthouse is the County's project, (ii) the City shall have no ownership, control or management with respect to the Courthouse, and (iii) the County shall retain control of it, including without limitation with respect to planning, design, site-work, scheduling, and procurement of goods and services.

D. The County intends that all construction for this project and site improvements will be in accordance with applicable federal state and local laws and regulations, or valid waiver thereof.

E. The County shall provide the City with reasonable documentation of the Total Project Cost from time to time.

SECTION IV CITY COMMITMENT

A. City Contribution Commitment. The City agrees to contribute to the County an amount equal to the lesser of: (i) twenty percent (20%) of the Total Project Cost and (ii) Thirty Million Dollars (U.S. \$30,000,000.00) (such amount, the “**City Contribution Commitment**”). Notwithstanding provisions in the MOU which contemplated the possibility of the City issuing debt to pay all or a portion of the City Contribution Commitment, the City shall pay the City Contribution Commitment over time, as set forth below, and the City will not issue any debt to pay any portion of the City Contribution Commitment.

B. Installment Payments.

1. 30 Annual Payments. The City hereby agrees to make thirty (30) annual payments to the County in an annual amount equal to five percent (5%) of the City Contribution Commitment determined pursuant to Sections IV.A and IV.B.2 hereof, with the first such payment being made on or before the later of:

- a. thirty (30) days prior to the County’s first payment on the County Financing; and
- b. the first to occur of: (i) February 15, 2019 or (ii) commencement of construction;

and each subsequent payment shall be due, and shall be paid no later than, the same date of the year during each of the subsequent twenty-nine (29) years. In the event the Total Project Cost, when finally calculated, is less than \$150,000,000.00, the annual payment amount will be recalculated as set forth in Section IV.B.2 below.

2. Initial Payments and Recalculation of Annual Payment Amount. The parties acknowledge that the actual amount of the City Contribution Commitment will not be determined until completion of the Courthouse Project because the Total Project Cost, on which the City Contribution Commitment is based, will not be calculated until completion of the Courthouse Project. Until such time as the County has completed the Courthouse Project and made the final calculation of the Total Project Cost, the amount of each annual payment to the County will be One Million Five Hundred Thousand Dollars (US.\$ 1,500,000.00), which amount is 5% of the estimated City Contribution Commitment. Once the final Total Project Cost is calculated and actual amount of the

City Contribution Commitment is determined after completion of the Courthouse Project, the payment amount for each subsequent installment payment will be recalculated as follows:

$$\text{Annual payment} = \frac{1.5 \times \text{Outstanding Balance of City Contribution Commitment}}{\text{Number of Remaining Installment Payments}}$$

3. Examples. By way of example:

a. If the actual Total Project Cost is \$150,000,000.00, then the City Contribution Commitment equals to \$30,000,000 (20% of the Total Project Cost). The annual payments required to be made by the City to the County would be One Million Five Hundred Thousand Dollars (U.S. \$1,500,000.00) (5% of the Total Project Cost). No recalculation of the amount would be required under Section IV.B.

b. If the actual Total Project Cost is \$145,000,000.00, then the City Contribution Commitment equals \$29,000,000 (20% of the Total Project Cost). If those amounts are determined after the City has made 5 payments of \$1.5 Million Dollars, the City will have been credited pursuant to Section IV.C below with \$5,000,000.00 towards the City Contribution Commitment, and the outstanding balance of the City Contribution Commitment would be \$24,000,000.00 (\$29 million less \$5 million credit). Having made five annual payments, the City would have 25 annual payments remaining. Each of the remaining annual payments would be \$1,440,000.00.

c. If the Actual Project Cost is \$155,000,000.00, then the City Contribution Commitment equals \$30,000,000.00 and, as set forth in Section 3a, the annual payments remain as 1,500,000.00.

4. Nothing in this Section IV.B shall be construed to prevent the City from making payments on the City Contribution Commitment prior to the date for such payment.

C. Crediting Installment Payments against the City Contribution Commitment. The City acknowledges that the total installment payments paid to the County over 30 years as set forth in this Agreement will exceed the City Contribution Commitment by 50%. The City has agreed to provide such additional amount in recognition of the fact that (i) the County will be required to include in the County Financing an amount sufficient to raise funds equal to the City Contribution Commitment in order to fully fund construction of the Courthouse Project, and (ii) the County will be required to pay interest on such amount. Such additional amount being paid by the City through its annual installment payments is only a reasonable approximation of the corresponding interest to be paid by the County and is not intended to be a precise amount. Accordingly, for purposes of calculating the City's satisfaction of the City Contribution Commitment, each dollar and a half (\$1.50) paid pursuant to Section IV.B reduces the outstanding balance of the City Contribution Commitment by one dollar (\$1.00). For example, an annual payment of One Million Five Hundred Thousand Dollars (\$1,500,000.00) under Section IV.B will reduce

the outstanding balance of the City Contribution Commitment under IV.A. by One Million Dollars (\$1,000,000).

D. Notice Regarding Dates. For the purpose of determining when a payment is due from the City under this Section IV, the date of commencement of construction and the date on which the County's first payment on the County Financing is due shall be deemed to be the later of (i) the date set forth by the County in a notice to the City of the anticipated construction commencement date or the date the first payment will be due on the County Financing, as the case may be and (ii) thirty days after such notice.

E. Escrow. With respect to any payment made by the City prior to commencement of construction of the Courthouse by the County, the City has the option to make such payment in escrow; provided, however, that the City must give the County not less than sixty (60) days prior written notice that it will be exercising this option and the City and the County must agree to, and enter into an appropriate agreement with, a third party escrow agent prior to the due date for such payment. Any payments made in escrow will be released to the County within seven (7) days of provision by the County of notice that construction of the Courthouse has commenced.

F. TIRZ. If the City creates a Tax Increment Reinvestment Zone ("**TIRZ**") including any of the Edinburg downtown area located within twenty (20) blocks of the blocks on which the Courthouse is located, then the City shall cause the TIRZ to dedicate the tax increment revenue (other than any tax increment revenue, if any, contributed by the County) to fulfill the City Contribution Commitment before using any such TIRZ funds for other purposes. Without limiting the generality of the foregoing, if the County participates in such TIRZ, no County funds shall be used for the City Contribution Commitment.

G. Off-Site Infrastructure. The Courthouse Project will require off-site infrastructure design, approval and construction for improvements including, without limitation, drainage systems, utilities, roadways and traffic controls ("**Off-Site Infrastructure**"). The County and City agree that payments by the City or any third party, including the Hidalgo County Metropolitan Planning Organization, for Off-Site Infrastructure shall not count towards the City Contribution Commitment.

SECTION V GENERAL TERMS

A. Assignment; Successors and Assigns. The parties shall not assign this Agreement without the written consent of the other parties. This Agreement shall bind and inure to the benefit of their respective parties and their respective permitted successors and assigns.

B. Entire Agreement. This Agreement and the MOU, which is incorporated by reference and attached as **Exhibit "B"**, supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement, and contains all of the covenants and agreements between the parties with

IN WITNESS HEREOF, the parties hereto have executed this Agreement in duplicate originals effective on this 17th day October, 2017.

CITY OF EDINBURG, TEXAS

By: _____
Richard Garcia, Mayor

ATTEST:

_ Myra L. Ayala Garza, City
Secretary

APPROVED AS TO FORM FOR CITY:
Palacios Garza & Thompson, P.C.

By: _____
_____, City Attorney

COUNTY OF HIDALGO, TEXAS

By: _____
Ramon Garcia, County Judge

ATTEST:

Arturo Guajardo, Jr. County Clerk

APPROVED AS TO FORM FOR COUNTY:
Atlas, Hall & Rodriguez, L.L.P.

By: _____
Stephen L. Crain

Exhibit A

To

380 Agreement Between the City of Edinburg and the County of Hidalgo

COURTHOUSE PLANS AS OF OCTOBER 17, 2017
(See attached ___ pages)

Exhibit B

To

380 Agreement Between the City of Edinburg and the County of Hidalgo

MOU

(See attached 5 pages)